



*PETROLEUM
ENVIRONMENTAL CLEANUP
FUND AWARD*

INFORMATION ABOUT PECFA
REIMBURSEMENT



PECFA PROGRAM

ELIGIBILITY

WHO MAY SUBMIT A CLAIM?

The responsible party, owner or operator, agent or an assignee may submit a claim.

If the responsible party is not the sole owner of the site, an Owner Assignment Certification Form 5 (ERS-8070) shall be filed with the department to establish one entity to submit the claim and receive the award.

The owner may, with the Department's written approval, designate an "agent". The agent must agree to complete and pay for the remediation up to the point of closure, natural attenuation monitoring, operation and maintenance of a treatment system or long term monitoring. Both the owner and agent submit the claim and the award is made payable to both.

CLAIM REQUIREMENTS

To submit a claim, the claimant must do the following:

1. Register the petroleum product storage system or the home oil tank system with the Department. Any petroleum product storage tank system larger than 60 gallons must be registered with the Department.
2. Report the discharge immediately to the DNR or the Division of Emergency Government in the Department of Military Affairs.
3. Select a consulting firm through a comparison of at least three firms. It is not mandatory to select the lowest cost firm. **The consulting firm comparison was created for the protection of the claimant to help ensure a quality consultant is chosen. Remember: check the consultant's references**
4. The consultant must conduct the DNR required site investigation.
 - a) If the total cost for site cleanup will exceed \$60,000 the Department will use a public bid process to assist in establishing a cost cap to site closure.
 - b) Once the Department establishes a cap on total costs they will notify the owner. The claimant will also be provided an approval to submit their claim for investigation costs. The Department may elect to bundle the site with other remedial efforts in the area in or to obtain a lower remediation cost.

(NOTE: Bundling' means the process of providing investigation or remedial action services, or both, across multiple occurrences while utilizing one consulting firm or common commodity services and providers, or both, to reduce total remediation cost.)

If a bundle is constructed or a bid is conducted and the claimant elects not to use the lowest cost approach, claimant reimbursement will be limited to the lowest bid/bundle cost.

- c) During the investigation and remediation processes, a minimum of 3 bids per commodity item is required. All commodity services must be obtained after comparing a minimum of three bids from responsible providers. The lowest cost provider shall be selected. Consultants can only provide consulting activities and commodity services shall be provided only by entities totally independent from the consulting firm. Home heating oil tank remediations, however, are exempt from commodity bidding.
- d) The maximum allowable cost for a site investigation and the development of the remedial action plan is \$40,000. If the site investigation is anticipated to exceed the \$40,000 cap, written approval from the Department for the additional costs must be obtained prior to incurring them.
- e) Investigations begun after August 31, 2001 must be completed by the first day of the 61st month after notification of contamination or interest costs incurred after that date are ineligible.
- f) Investigations begun before August 31, 2001 must be completed by the first day of the 61st month after notification of contamination or the first day of the 25th month after August 31, 2001, whichever is later; interest costs incurred after the later of those dates are ineligible.
5. Initiate a claim by filling out an "Initial Claim" form that you can obtain, by calling (608) 264-8765, or by downloading from our web site at <http://commerce.wi.gov> or by writing to:

BUREAU OF PECFA
PO BOX 7838
MADISON, WI 53707-7838

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PECFA PROGRAM ELIGIBILITY

WHAT TANKS ARE INCLUDED IN THE PROGRAM?

Coverage under the PECFA program includes petroleum product storage tank systems defined as those containing gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel, and used motor oil. Many underground and aboveground storage systems, including any on-site integral piping and dispensing systems, are covered. Specifically, the following systems are covered under COMM 47.02 Coverage:

- (a) Commercial tanks systems larger than 110 gallons capacity;
- (b) Heating oil tank systems where the product is sold;
- (c) Farm and residential tanks systems larger than 1,100 gallons capacity and not storing heating oil for consumptive use on the premises;
- (d) Tanks systems storing gasoline, diesel fuel, or other vehicle fuels, other than residential tanks of 1,100 gallons or less capacity;
- (e) Farm vehicle fuel systems of 1,100 gallons or less capacity, which meet additional statutory requirements regarding farm size and farm income, and are used to store products not for resale.
- (f) Heating oil tank systems owned by public school and technical college districts, supplying heating oil for consumptive use on premises.
- (g) Tank systems located on Trust Lands of an American Indian tribe if the owner or operator's tank system would be otherwise covered under (a) through (f) and the owner or operator complies with the rules promulgated in COMM 47 and COMM 10 and obtains all applicable agency approvals.
- (h) Home heating oil tank systems provided the claims are for underground tank systems and the persons comply with rules promulgated in COMM 47 and COMM 10.
Please see page 6 for actual maximum awards and deductibles for the eligible tank system listed.

Changes in the PECFA statute have also limited coverage for certain new and upgraded underground tank systems. Page 7 explains the

eligibility and insurance requirements for the new and upgraded tank systems.

WHAT COSTS ARE ELIGIBLE?

The following is a listing of items eligible for reimbursement. Although the final determination of eligibility is made at the time of claim review, this list is a good guide for claimants:

1. Investigation of potential sources of petroleum contamination.
2. Preparation of a remedial action plan.
3. Laboratory testing for covered products.
4. Investigation and assessment for the degree and extent of contamination.
5. Removal of contaminated soils.
6. Costs of equipment mobilization.
7. Removal of petroleum products from surface water, groundwater, and soil.
8. Treatment and disposal of contaminated soils.
9. Monitoring to establish existence of natural cleanup progress.
10. Charges for maintenance of equipment used for petroleum product recovery and remedial action.
11. State or municipal permits for installation of remedial equipment.
12. Actual costs for the purchase or rental of temporary building structures to house remedial equipment.
13. Restoration or replacement of a private or public potable water supply.
14. Contractor or subcontractor costs for remedial action.
15. Actual costs for travel and lodging within state rates.
16. Fees up to \$500 for progress payment or final claim preparation.
17. Compensation to third parties for bodily injury and property damage due to a petroleum product discharge from underground storage tank systems.

WHAT COSTS ARE IN-ELIGIBLE?

The following is a listing of items in-eligible for reimbursement. Although the final determination of eligibility is made at the time of claim review, this list is a good guide for claimants.

1. Remedial costs incurred on or before August 1, 1987.
2. Any costs submitted without absolute proof of payment.
3. Costs of petroleum transportation equipment spill clean-ups.
4. Costs for work performed before the Department of Natural Resources is notified of a release.
5. Overtime labor charges, except for approved emergency actions.
6. Used-oil remediation costs not from internal combustion engines.
7. Investigation or remedial action costs for sites outside of Wisconsin.
8. Costs associated with environmental audits, real estate transactions, construction projects, or long-term loan transactions.
9. Costs for investigations to locate petroleum product storage systems or home oil systems to determine if a tank is eligible for PECFA.
10. Tank emptying, cleaning, disposing, removing, and closing costs after November 1, 1991.
11. Laboratory rush charges, priority mail, or priority shipping fees, unless related to an approved emergency action.
12. Air travel.
13. Costs incurred after DNR or Commerce determines no further action is needed, except for abandonment of monitoring wells and site closure.
14. Costs not integral to the remediation of a petroleum product discharge.
15. Incompetent or ineffective clean-up costs which were not based upon sound professional and scientific judgment.
16. Costs of redoing incomplete or incompetent remedial action work.
17. Costs or rework on remedial action sites or systems to accommodate construction upgrades, retrofits, or redevelopment projects.
18. Costs above those necessary to bring a site to the required level of remediation.
19. Costs to fix or replace damaged buildings, sewer lines, water lines, electrical lines, phone lines, fiber optic lines, or other utilities on the property.
20. Costs of reinstalling damaged remedial equipment and reinstalling or modifying remedial equipment for purposes other than effective remediation.
21. Interest costs accrued due to improper or incomplete filing of claims or a lack of response to Department requests for additional information, except if delayed by DNR or Commerce processes.
22. Late service fees or costs related to invoices or bills for which payment verification is unobtainable.
23. Costs for sampling and testing for heavy metals, except lead when the discharge is from a leaded gasoline system or lead and cadmium when the source is used motor oil.
24. Costs associated with the analysis of inappropriate constituents not associated with an eligible petroleum product.
25. Costs associated with full VOC testing after the investigation phase, unless required by the DNR for monitoring PECFA eligible products and the DNR letter documenting the requirement is submitted with the claim.

WHAT COSTS ARE IN-ELIGIBLE CON'T?

26. Costs of repairing, retrofitting, or replacing a petroleum product storage system or home oil tank system such as, but not limited to, tank bedding materials or fill for setting tanks, lines, or canopies.
27. Costs associated with capital improvements, reinstallation of electrical, dispensers, pumps, or other items for retrofits, upgrades, or new construction.
28. Costs for remedial action activities funded under 42 US 6991, unless the owner or operator or the person owning the home oil tank system repays the funds provided under 42 USC 6991.
29. Expenditures required by the DNR or the Department in order to meet the groundwater protection standard, ch. 160, Stats., ch. COMM 10 or other administrative rules but not related to a petroleum product discharge under this chapter.
30. Costs associated with loss of business.
31. Costs associated with the razing of buildings, removal of roads, removal of footings and foundations, destruction of structures or other redevelopment costs.
32. Costs associated with loss of interest or dividends, or interest costs from a loan other than for remediation.
33. Costs associated with cement, blacktop replacement, on-site landscaping, or other improvements, except for depreciated values in third-party actions.
34. Costs associated with the closure of a tank system.
35. Costs associated with tank closure assessments.
36. Costs of removing tank systems that have previously been closed in-place with inert materials, sand, pea gravel, water, or other substances.
37. Costs associated with the abandonment of wells not related to the remedial action.
38. Costs, other than costs for compensating third parties for bodily injury and property damage, which the Department determines to be unreasonable or unnecessary to carry out the remedial action activities.
39. Costs associated with third-party actions by adjoining property owners for the installation of monitoring wells or other clean-up related items unless a court judgment has been obtained.
40. Costs associated with third-party damages from a discharge originating from an aboveground storage tank.
41. Attorney fees associated with third-party actions.
42. Any costs associated with an appeal of a determination specific to the scope of COMM 47.
43. Attorney fees including, but not limited to, legal advice, appeals, or other representation on behalf of the responsible party or agent.
44. Supervisory or management costs when a municipality or company uses its own personnel or personnel from a wholly or partially owned subsidiary for remedial activities.
45. Costs for supervisory or management activities conducted by owners or operators
46. Costs for right-of-entry or trespass fees.
47. Separate vehicle and mileage costs.
48. Costs determined by the Department to be excessive.
49. Subcontractor mark-ups for work performed after 1/31/93.
50. Costs associated with general program support and office operation which are expected to be included in the hourly staff rates (i.e. copies).
51. Costs reimbursed by insurance companies unless performing in an agent role.
52. Interest ineligibility:
 - a. If a claim is submitted more than 120 days after receipt of no further action notification, interest costs incurred 60 days after notification are ineligible.
 - b. If written notification of no further remedial action was received prior to August 31, 2001, & the final claim is submitted more than 120 days after 8-31-01, interest costs incurred after January 2, 2002 are ineligible.

CLAIM SUBMITTAL MILESTONES

WHEN CAN A CLAIM BE SUBMITTED?

Claims may be submitted after certain milestones are reached per Comm 47.355 Award payments for claims received by the department on or after April 21, 1998:

1. Completion of an emergency action.
2. After completion of an investigation, completion of the Department's bidding process or submittal of the remedial action plan, if applicable, and receipt of written approval by the department to submit the investigation claim.
3. Approval of closed remedial action or no further action.
4. Approval of natural attenuation as a final remedial response or at the end of each two-year cycle of the monitoring necessary to show that remediation by natural attenuation will occur.
5. At the end of each two-year cycle of monitoring required for off-site contamination.
6. After implementation and 2 years of actual operation, or monitoring, or combination thereof, and every 2 years thereafter.
7. For financial hardship claimants: after completion of the site investigation, completion of the Department's bidding process or submittal of the remedial action plan, if applicable, and receipt of written approval by the department to submit the investigation claim; after implementation of an approved remedial action; or annually after completion of each year of operation and maintenance or monitoring.
8. For sites selected by the department for progress payments based upon extreme life safety and environmental risk and where the claimant has demonstrated to the department's satisfaction that he or she does not have the financial means to conduct a remediation without progress payments; after completion of the site investigation, completion of the bidding process or submittal of the remedial action plan, if applicable, and receipt of written approval by the department to submit the investigation claim; after implementation of an approved remedial action; or annually after completion of each year of operation and maintenance or monitoring.

Other interim payments. The department shall also make awards at the following points:

1. When a lender terminates a funding relationship with a claimant and requests reimbursement for the funds expended.
2. When a claimant has incurred eligible expenses equal to the occurrence maximum plus the applicable deductible.

The Legislature approved the following milestone, which was included, as part of the Budget Bill signed on August 30, 2001:

1. A claim may be submitted if at least \$50,000 in unreimbursed eligible costs have been incurred and no claim has been submitted during the previous 12 months. This **INCLUDES** owners or operators who meet the test of self-insurance under Comm 10.82.

Petroleum Environmental Cleanup Fund Award (PECFA) Program -- Maximum Awards, Total Annual Awards and Deductibles

Type of Tank	Owner	For Sites where the investigation is started before 12/22/2001			For Sites where the investigation is started on or after 12/22/2001		
		Maximum Award Per Occurrence	Total Annual Awards	Deductible ⁽²⁾	Maximum Award Per Occurrence	Total Annual Awards	Deductible ⁽²⁾
Home Heating Oil	All	\$7,500	N/A	25% of eligible costs ⁽³⁾	No Change	No Change	No Change
Under-ground	Non-Marketer (the system does not store products for resale and handles 10,000 or less gallons per month)	\$500,000	\$1,000,000 ⁽⁴⁾	\$2,500 plus 5% of eligible costs, but not more than \$7,500 per occurrence. For claims where an acceptable RAP is received on or after 11/1/99. The deductible is \$2500 plus 5%.⁽⁶⁾	\$190,000	\$190,000	\$10,000 per occurrence
Under-ground	Marketer (the system stores products for resale) or Non-marketer with system that handles more than 10,000 gallons per month	\$1,000,000	\$1,000,000 ⁽⁴⁾	\$2,500 plus 5% of eligible costs, but not more than \$7,500 per occurrence. For claims where an acceptable RAP is received on or after 11/1/99. The deductible is \$2500 plus 5%.⁽⁶⁾	\$190,000	\$190,000	\$10,000 per occurrence
Above-ground	The system does not store products for resale and handles 10,000 or less gallons per month	\$500,000	\$1,000,000 ⁽⁴⁾	\$15,000 plus 2% of eligible costs over \$200,000 ⁽⁵⁾	\$190,000	\$190,000	\$10,000 per occurrence
Above-ground	The system stores products for resale or handles more than 10,000 gallons per month	\$1,000,000	\$1,000,000 ⁽⁴⁾	\$15,000 plus 2% of eligible costs over \$200,000 ⁽⁵⁾	\$190,000	\$190,000	\$10,000 per occurrence
Farm	Underground and aboveground vehicle fuel systems of 1,100 gallons or less storing products not for resale	\$100,000	\$100,000	\$2,500 plus 5% of eligible costs, but not more than \$7,500 per occurrence	No Change	No Change	No Change
Public School District and Technical College District	Heating oil for consumptive use on premises	\$190,000	\$190,000	25% of eligible costs	No Change	No Change	No Change

- (1) Maximum award in effect before December 22, 2001, applies to all eligible costs for investigations and remedial activities started before December 22, 2001.
- (2) COMMERCE may waive the deductible if it determines that the owner or operator is unable to pay. If COMMERCE waives the deductible, COMMERCE shall file a lien against the property until the lien is paid.
- (3) Nonprofit housing organizations are exempt from paying the deductible for tanks owned by the organization if they assist low-income persons with housing related problems.
- (4) \$2,000,000 maximum annual award if the claimant owns or operates more than 100 petroleum product storage tank systems.
- (5) For a "terminal" (a petroleum product storage system that is connected to a pipeline facility), the deductible is \$15,000 plus 5% of the amount by which eligible cost exceed \$200,000. **For a terminal where the RAP is received after 11/1/99 the deductible is \$15,000 plus 10% of the amount by which eligible costs exceed \$200,000.**
- (6) The change in deductible first applies to a person who submits a remedial action plan, that is acceptable to the department of Commerce or DNR on November 1,1999.

PECFA COVERAGE FOR NEW AND UPGRADED SYSTEMS

TANK SYSTEM TYPE:	SITE CONDITION:	OLD CONTAMINATION COVERED?	INSURANCE REQUIRED FOR:	INSURANCE WHEN?
<u>NEW UNDERGROUND SYSTEM</u>	CLEAN OR CONTAMINATED	YES, IF CONTAMINATION CONFIRMED BEFORE 1/1/96	NEW RELEASES FROM SYSTEM AFTER 1/1/96	REQUIRED 1/1/96
<u>UPGRADED UNDERGROUND SYSTEM</u> (see note 1)	CONTAMINATED AT TIME OF UPGRADE	YES, IF CONTAMINATION CONFIRMED BEFORE UPGRADE IS COMPLETED OR BEFORE 1/1/96	NEW RELEASES FROM SYSTEM WHEN CONFIRMED AFTER BOTH UPGRADE AND 1/1/96	REQUIRED ON 1/1/96, IF UPGRADED BEFORE THAT DATE, OR AFTER UPGRADE IF WORK IS COMPLETED AFTER 1/1/96 (see note 2)
<u>UPGRADED UNDERGROUND SYSTEM</u> (See note 1)	CLEAN AT TIME OF UPGRADE	NOT APPLICABLE	NEW RELEASES FROM SYSTEM WHEN CONFIRMED AFTER BOTH UPGRADE AND 1/1/96	REQUIRED ON 1/1/96, IF UPGRADED BEFORE THAT DATE, OR AFTER UPGRADE IF WORK IS COMPLETED AFTER 1/1/96 (see note 2)
<u>NEW ABOVEGROUND SYSTEM</u>	CLEAN OR CONTAMINATED	YES, IF CONTAMINATION CONFIRMED BEFORE 12/23/2001	INSURANCE IS NOT MANDATED, BUT NEW RELEASES FROM SYSTEM WHEN CONFIRMED AFTER 12/22/2001 WILL BE THE RESPONSIBILITY OF THE OWNER	
<u>UPGRADED ABOVEGROUND SYSTEM</u>	CLEAN AT TIME OF UPGRADE	NOT APPLICABLE	INSURANCE IS NOT MANDATED BUT NEW RELEASES FROM SYSTEM WHEN CONFIRMED AFTER 12/22/2001 WILL BE THE RESPONSIBILITY OF THE OWNER	
<u>UPGRADED ABOVEGROUND SYSTEM</u>	CONTAMINATED AT TIME OF UPGRADE	YES, IF CONTAMINATION CONFIRMED BEFORE UPGRADE IS COMPLETED	INSURANCE IS NOT MANDATED BUT NEW RELEASES FROM SYSTEM WHEN CONFIRMED AFTER 12/22/2001 WILL BE THE RESPONSIBILITY OF THE OWNER	

NOTE 1: An upgraded system, by definition is a system that has all of the following: Corrosion protected tank(s), Corrosion protected line(s), Spill containment devices, and Overfill devices.

NOTE 2: If a system is upgraded after 12/31/93, and the owner or operator applies for private insurance within 30 days, a 90 day tail on PECFA coverage is provided for the upgraded system(s).